In the Supreme Court of the United States

OCTOBER TERM, 1934

No. 146

CLIFTON MANUFACTURING COMPANY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

On May 28, 1918, the petitioner filed a tax return for the fiscal year ending March 31, 1918. (R. 62.) Thereafter the Revenue Act of 1918 was passed and made applicable to the taxable year 1918. Following the enactment of this statute, an additional return for the same period was filed on April 29, 1919, under the 1918 Act.

On June 25, 1923, the petitioner executed the first of a series of waivers of the limitation on assessment and collection.[1] An assessment made by

[1] Since the applicable period of limitations was five years, this waiver was executed before the period had run, if computed from the date of filing of the later return, but not if computed from the date of filing of the earlier return.

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the Commissioner in September, 1926, and collections in September and October, 1926, form the basis for the present controversy. The petitioner admits they were valid if the waivers were valid, but insists that the waivers were invalid since they were obtained under a "mutual mistake of the parties and misrepresentation by the Government agents to the effect that the limitation period, * * * had not expired when each of the purported waivers was requested." (Pet. 3.)

Petitioner brought suit against the United States to recover the amounts in question, praying for equitable relief against the defense of the waivers if they should be held valid at law. The District Court decided against petitioner on two independent grounds: (1) That the period of limitations began to run from the filing of the second return so that there could not have been any misrepresentation or mutual mistake; (2) that even if the period of limitations began to run from the filing of the earlier return, the waivers were nevertheless valid. (R. 71–80.) Upon appeal, the Circuit Court of Appeals affirmed the judgment of the District Court in a *per curiam* opinion which passed upon only the first point. (R. 148.)

The first point is so closely related to the questions involved in *National Paper Products Co.* v. *Helvering,* Nos. 35, 39, October Term, 1934, and *Zellerbach Paper Co.* v. *Helvering,* Nos. 36–38, October Term, 1934, in which certiorari was

granted June 4, 1934, that we do not oppose the present petition. However, we respectfully recommend that this Court defer action on this petition until after it has decided the above cases. If those cases are decided in favor of the Government, the petition should be denied. If they are decided against the Government, we do not oppose the granting of certiorari, but respectfully suggest that the case then be remanded to the Circuit Court of Appeals so that it may pass upon the second point.

Respectfully submitted.

J. CRAWFORD BIGGS,
Solicitor General.

JULY 1934.

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